

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
)	
Amendment of Parts 1, 21, 73,74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
And Other Advanced Services in the 2150-2162)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
Amendment of Pats 21 and 74 to Engage in Fixed)	
Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74)	WT Docket No. 02-68
Of the Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above referenced proceeding. NTCA is a not-for-profit association established in 1954. It represents more than 500 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. A substantial number of NTCA members currently hold MDS licenses and/or lease capacity from ITFS licensees. All NTCA members are small

carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996.¹

I. INTRODUCTION

The spectrum at issue is valuable and is uniquely suited to provide a host of innovative services to portions of rural America. As stated previously in comments, NTCA believes that increased flexibility and reduced regulatory burdens will greatly enhance the future utilization of the MDS/ITFS spectrum.²

NTCA agrees with the Commission that rule changes for the use of the spectrum band are necessary to allow new services to develop. Wireless technology may provide the difficult “last mile” link to the most remote areas of rural America, areas that are very expensive, if not virtually impossible to reach via wired technology. Rural carriers should be encouraged to experiment with wireless spectrum so that they may provide service to previously unserved subscribers and bring the benefits of broadband to areas where other technologies are too costly or unavailable. The Commission appears committed to facilitate the deployment of low power, cellularized two-way systems utilizing the MDS spectrum. NTCA agrees that such flexibility is warranted. However, the Commission must take care to ensure that neither the rural carrier nor the rural consumer is sacrificed for the good of the large carrier with nationwide interests.

To protect the interests of the rural consumer, NTCA submits that the Commission should: 1) Permit rural carriers the flexibility to use the spectrum to continue to provide high-powered one-way video services; 2) Permit commercial operations in the ITFS spectrum band, but license the spectrum according to small

¹ 47 U.S.C. § 153(37).

² See NTCA Comments in RM-10586 (Nov. 14, 2002).
National Telecommunications Cooperative Association
Comments, September 8, 2003

geographic territories with protection for incumbents; and 3) Hold any large carriers with large geographic area licenses to strict performance standards.

II. RURAL CARRIERS SHOULD BE PERMITTED THE FLEXIBILITY TO ENGAGE IN LOW OR HIGH POWERED OPERATIONS

In its NPRM, the Commission states that the services' current interleaved channelization framework, while appropriate for MDS and ITFS first generation technology, is not appropriate for the deployment of digital two-way services in a broadband environment. The Commission seeks comment on ways to resolve the existing incompatibility between high-power one-way video services and low-power cellular services. It proposes to either separate them into distinct band segments or to require an across-the-board reduction in signal strengths at system boundaries. The Commission also seeks specific comment on whether it should keep any portion of the band on a long-term basis to accommodate high power services.

The Commission should approach its rulemaking with the understanding that flexibility is the key to the successful use of the MDS spectrum. While many carriers would benefit from signal strength reduction, other carriers and their customers rely on the high-power use of the spectrum. Some rural carriers are using the MDS spectrum to provide wireless cable television service. The ability to transmit signals across long distances reduces the number of sites needed and the costs associated with providing the service. This is especially important in a rural environment where over the air reception is unavailable and low customer density makes it uneconomical to deploy a large number of sites or to string cable to serve just a few customers. The Commission's proposal to impose an across the board reduction in power would effectively end rural carriers' video

services. The MDS video service is important to rural consumers with few, if any, other options for television service.

Rather than require rural MDS carriers to reduce their signal strength or have fewer channels available to them, they should be permitted to utilize their own band plan. The rural carriers would coordinate with other licensees, if any, in their market. These rural carriers should also have the flexibility to convert their operations to a low-power cellular band plan when and if technology and market conditions make it possible and necessary to do so. Spectrum is typically less congested in rural areas and greater flexibility is possible and warranted. Rather than mandate low-power operations, the Commission should permit rural carriers to determine what operations will best suit their customers.

III. COMMERCIAL OPERATIONS SHOULD BE PERMITTED TO ACQUIRE ITFS LICENSES

The FCC seeks comment on whether to permit commercial operators to acquire and operate ITFS licenses. NTCA supports this proposal. The ITFS spectrum has particular value in rural areas. It is currently used to provide educational programming in rural classrooms and may be used in distance learning situations. It is also leased to provide wireless cable to rural consumers with no over the air reception and may provide wireless two-way data. NTCA supports the flexible use of the spectrum. Commercial operators should be permitted to acquire the spectrum, meet any educational requirements and use the excess capacity to meet the needs of the rural consumers.

IV. NTCA SUPPORTS GEOGRAPHIC AREA LICENSING WITH PROTECTION FOR INCUMBENTS

Currently, MDS and ITFS licensees and applicants must apply to license each transmitter site in the area they wish to serve and MDS BTA channels are licensed on a geographic area basis. The Commission seeks comment on whether unassigned ITFS spectrum should be licensed based on pre-defined service areas. NTCA agrees with the Commission that geographic area licensing offers greater operational flexibility and ease of administration for consumers, licensees and regulators. NTCA therefore supports geographic licensing for the unassigned ITFS spectrum.

This geographic licensing must be done with care. It is important that the Commission protect incumbent users of the spectrum. Small and rural carriers have been using sites to provide service in areas with few, if any, other programming alternatives. These carriers have invested the substantial resources and taken the risk to serve these remote and rural areas. Existing transmit and receive sites in rural areas must be protected against interference from any new licensees. This protection should apply not only to licensed sites within the protected 35-mile radius, but also to individual receive sites. Only with this interference protection will rural consumers continue to receive the services now enjoyed.

V. TO ENSURE SERVICE IN RURAL AREAS, THE COMMISSION SHOULD AUCTION THE SPECTRUM ACCORDING TO SMALL GEOGRAPHIC TERRITORIES

Assuming that it adopts wide area licensing, the Commission seeks comment on the size of the geographic areas to be licensed. NTCA believes that the spectrum will be

best utilized in rural areas if the spectrum is licensed according to small license areas. The Commission has an obligation under Section 309(j) of the Communications Act to disseminate licenses among a wide variety of applicants, to provide spectrum opportunities to rural telephone companies, and to promote service in rural areas.³ All of these goals may be accomplished if territory is licensed according to small areas.

Rural carriers are interested in providing service to their communities. They will do so if they obtain the spectrum. The only way small and rural carriers will obtain spectrum is if small geographic areas are auctioned. Rural carriers simply lack the resources to outbid large carriers interested in serving vast geographic territories.

Further, the only way rural consumers will receive service is if rural carriers obtain the spectrum. Large carriers with large license territories concentrate their build-out efforts on the densely populated areas. Cities provide a greater return on the dollar as fewer sites serve more customers. The rural consumer is often ignored by the large carrier. Given the unique characteristics of the MDS/ITFS spectrum and its ability to overcome the challenges of serving some rural areas, the Commission would be doing a disservice to rural consumers if it licensed the spectrum according to large territories. NTCA strongly urges the Commission to ensure the successful further deployment of MDS/ITFS services in rural areas by licensing the unassigned spectrum according to small geographic territories.

VI. IF SPECTRUM IS AUCTIONED ACCORDING TO LARGE GEOGRAPHIC AREAS, CARRIERS SHOULD BE HELD TO STRICT PERFORMANCE STANDARDS

If the Commission decides to permit commercial operators to obtain ITFS spectrum and auctions licenses according to large areas, it should enforce its performance

³ 47 U.S.C. § 309(j)(3). National Telecommunications Cooperative Association Comments, September 8, 2003

requirements so that spectrum in rural areas does not lie fallow. The Commission proposes to eliminate extension of time requests for geographic area licensees who must satisfy a substantial service performance standard. NTCA supports this proposal, but argues that if large licensees obtain spectrum for large geographic areas, they must provide service or forfeit spectrum.

The Commission questions whether and how construction benchmarks may encourage licensees to deliver wireless services to rural populations. Currently, there is little incentive for a large carrier with a large license to provide service to rural areas. As discussed *supra*, large carriers must recoup their substantial investment in obtaining valuable spectrum licenses. It makes sense that build-out efforts are concentrated in the more profitable urban areas. Sparsely populated rural areas are served last, if at all. For the good of the rural consumer, the Commission must provide motivation for the large carrier to serve rural areas or part with unused spectrum.

Any construction benchmarks should apply to large carriers with large geographic licenses. The Commission should not impose more stringent construction requirements just on rural areas as this would unfairly disadvantage small carriers.

NTCA proposes that the Commission adopt a geography-based construction safe harbor for large carriers with large service territories that may be met through build-out or partitioning. After giving the carriers an opportunity to explain a failure to build-out, the Commission may reclaim unserved license territory for reauction according to the smaller geographic area. This proposal helps the Commission to satisfy its Section 309(j) obligations and ensures service to rural consumers.

VII. CONCLUSION

NTCA supports increased flexibility in the MDS/ITFS spectrum band. The spectrum currently provides a useful solution to bringing video service to some difficult to serve areas. Increased flexibility will provide more innovative services to remote consumers. However, in considering the future of this band, the Commission must take care to ensure that the interests of large carriers with nationwide interests are not given priority over the rural consumers.

To protect the rural interests, NTCA proposes that the Commission: 1) Permit rural carriers the flexibility to use the spectrum to continue to provide high-powered one-way video services; 2) Permit commercial operations in the ITFS spectrum band, but license the spectrum according to small geographic territories with protection for incumbents; and 3) Hold any large carriers with large geographic area licenses to strict performance standards.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WT Docket No. 03-66, WT Docket No. 03-67, MM Docket No. 97-217, WT Docket No. 02-68, FCC 03-56 was served on this 8th day of September 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

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